

BILL LOCKYER, Attorney General  
of the State of California  
JESSICA M. AMGWERD, State Bar No. 155757  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 445-7376  
Facsimile: (916) 327-8643

Attorneys for Complainant

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**NIKKI LYNN MCKEON**  
4709 Claremont Ave  
Stockton, CA 95207

Pharmacy Technician Registration TCH 49265

Respondent.

Case No. 2961

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about April 24, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2961 against Nikki Lynn McKeon ("Respondent") before the Board of Pharmacy.

2. On or about June 20, 2003, the Board of Pharmacy issued Registration No. TCH 49265 to Nikki Lynn McKeon (aka Nikki deWeese). The Pharmacy Technician Registration No. TCH 49265 will expire on November 30, 2006.

3. On or about May 1, 2006, Jessica L. Taylor, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2961, Statement to Respondent, Notice of Defense, and Request for Discovery to Respondent's address of record with the Board, which was and is 4709 Claremont Ave, Stockton, CA 95204.

1 A copy of the Accusation, the related documents, and Declaration of Service are attached as  
2 **Exhibit A**, and are incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. The First Class pleading packet sent on May 1, 2006, to the 4709  
6 Claremont Ave, Stockton, CA 95204 address was returned, with the following notification from  
7 the U.S. Postal Service:

8 "Unable to Forward  
9 No Forward Order On File  
10 Return To Postmaster  
Of Addressee For Review"

11 The Certified mail (No. 7160 3901 9848 9138 1954) sent the same day to the same address was  
12 returned by the U.S. Postal Service marked with the same notification as set forth above. A copy  
13 of the postal returned documents are attached hereto as **Exhibit B**, and are incorporated herein by  
14 reference.

15 6. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the  
17 merits if the respondent files a notice of defense, and the notice  
18 shall be deemed a specific denial of all parts of the accusation not  
19 expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the  
agency in its discretion may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service  
21 upon her of the Accusation, and therefore waived her right to a hearing on the merits of  
22 Accusation No. 2961.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of  
25 defense or to appear at the hearing, the agency may take  
26 action based upon the respondent's express admissions or  
upon other evidence and affidavits may be used as evidence  
without any notice to respondent.

27 ///

28 ///

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B finds that the allegations in Accusation No. 2961 are true.

10. The total costs for investigation and enforcement are \$1,241.00 as of August 12, 2006.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Nikki Lynn McKeon has subjected her Pharmacy Technician's Registration No. TCH 49265 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy, Department of Consumer Affairs is authorized to revoke Respondent's technician's registration No. TCH 49265 based upon violations of Business and Professions Code section 4301(f) (obtaining controlled substance through fraud, deceit, subterfuge), section 4301(j) (violation of state statutes), section 4301(q) (subverting an investigation), section 4301(o) (violation of laws and regulations), as alleged in Accusation No. 2961.

///

///

///

///

///

///

///

///

/// /// ///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

4

9

10

11

12

13

14

15

Exhibit A

Accusation No. 2961,  
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JESSICA M. AMGWERD, State Bar No. 155757  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 445-7376  
Facsimile: (916) 327-8643  
6 Attorneys for Complainant  
7

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2961

12 **NIKKI LYNN MCKEON**  
4709 Claremont Ave  
13 Stockton, CA 95207

**ACCUSATION**

14 Pharmacy Technician Registration TCH 49265

15 Respondent.  
16

17 Complainant alleges:

18 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her  
19 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of  
20 Consumer Affairs.

21 **I.**

22 **LICENSE HISTORY**

23 2. On June 20, 2003, the Board issued Original Pharmacy Technician  
24 Registration No. TCH 49265 to Nikki Lynn McKeon (aka Nikki deWeese), to act as a pharmacy  
25 technician in California. Ms. McKeon's pharmacy technician's registration was in full force and  
26 effect at all times relevant to the charges brought herein and will expire on November 30, 2006,  
27 unless renewed.  
28

1 II.

2 **STATUTORY PROVISIONS**

3 3. Under Business and Professions Code ("Bus. & Prof. Code") section 4300  
4 the Board may discipline any license, for any reason provided in the Pharmacy Law, (i.e., Bus. &  
5 Prof. Code section 4000 et. seq.)

6 4. Bus. & Prof. Code section 4301 states, in pertinent part:

7 **§ 4301. Unprofessional conduct; licenses procured through**  
8 **misrepresentation, fraud, or mistake**

9 The board shall take action against any holder of a license who is guilty of  
10 unprofessional conduct or whose license has been procured by fraud or  
11 misrepresentation or issued by mistake. Unprofessional conduct shall  
include, but is not limited to, any of the following:

12 ....

13 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
14 deceit, or corruption, whether the act is committed in the course of relations  
as a licensee or otherwise, and whether the act is a felony or misdemeanor  
or not.

15 ...

16 (j) The violation of any of the statutes of this state or of the United States  
regulating controlled substances and dangerous drugs.

17 ....

18 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
19 or abetting the violation of or conspiring to violate any provision or term of  
this chapter or of the applicable federal and state laws and regulations  
governing pharmacy, including regulations established by the board.

20 ...

21 (q) Engaging in any conduct that subverts or attempts to subvert an  
22 investigation of the board.

23 5. Bus. & Prof. Code section 4059.5(a) states as follows:

24 **§ 4059.5. Dangerous drugs and devices; license necessary to**  
25 **order; transfer, sale or delivery; deliveries to hospitals and**  
**pharmacies**

26 (a) Except as otherwise provided in this chapter, dangerous drugs or  
27 dangerous devices may only be ordered by an entity licensed by the board  
and must be delivered to the licensed premises and signed for and received  
28 by a pharmacist-in-charge or, in his or her absence, another pharmacist  
designated by the pharmacist-in-charge. Where a licensee is permitted to

operate through an exemptee, the exemptee may sign for and receive the delivery.

6. Bus. & Prof. Code section 4060 states as follows:

**§ 4060. Controlled substances; possession**

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock containers correctly labeled with the name and address of the supplier or producer.

...

7. Health and Safety Code section 11173(a), states as follows:

**§ 11173. Fraud, deceit, misrepresentations**

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

8. Health and Safety Code section 11209(a), states as follows:

**§ 11209. Delivery of Schedule II, III, or IV controlled substances; signing and retaining receipts; reports of discrepancies**

(a) No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substance received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy.

///

///

///

///



1                   9.     Health and Safety Code section 11350, in pertinent part, as follows:

2                   **§ 11350. Possession of designated controlled substances;**  
3                   **punishment and fine**

4                   (a) Except as otherwise provided in this division, every person who  
5                   possesses (1) any controlled substance specified in subdivision (b) or (c),  
6                   or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph  
7                   (14), (15), or (20) of subdivision (d) of Section 11054, or (2) any controlled  
8                   substances classified in Schedule III, IV, or V which, is a narcotic drug,  
9                   unless upon the written prescription of a physician, dentist, podiatrist, or  
10                  veterinarian licensed to practice in this state, shall be punished by  
11                  imprisonment in the state prison.

12                  ...

13                  10.     Health and Safety Code section 11352(a), states as follows:

14                  **§ 11352. Transportation, sale, giving away, etc., of designated**  
15                  **controlled substances; punishment**

16                  (a) Except as otherwise provided in this division, every person who  
17                  transports, imports into this state, sells, furnishes, administers, or gives  
18                  away, or offers, to transport, import into this state, sell, furnish, administer,  
19                  or give away, or attempts to import into this state or transport (1) any  
20                  controlled substance specified in subdivision (b), (c), or (e), or paragraph  
21                  (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or  
22                  (20) of subdivision (d) of Section 11056, or (2) any controlled substances  
23                  classified in Schedule III, IV, or V which, is a narcotic drug, unless upon  
24                  the written prescription of a physician, dentist, podiatrist, or veterinarian  
25                  licensed to practice in this state, shall be punished by imprisonment in the  
26                  state prison for three, four, or five years.

27                  11.     Bus. & Prof. Code section 118, subdivision (b), states:

28                  The suspension, expiration, or forfeiture by operation of law of a license  
issued by a board in the department, or its suspension, forfeiture, or  
cancellation by order of the board or by order of a court of law, or its  
surrender without the written consent of the board, shall not, during any  
period in which it may be renewed, restored, reissued, or reinstated, deprive  
the board of its authority to institute or continue a disciplinary proceeding  
against the licensee upon any ground provided by law or to enter an order  
suspending or revoking the license or otherwise taking disciplinary action  
against the licensee on any such ground.

12.     Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board  
may request the administrative law judge to direct a licensee found to have committed a violation  
or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
investigation and enforcement of the case.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

III.

**CONTROLLED SUBSTANCES AT ISSUE**

13. "Lortab", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

14. "Lorcet", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

15. "Norco", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

16. "Vicodin", a brand name for Hydrocodone, is an opiate and a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B&PC 4022	CONTROLLED SUBSTANCE PER H&S CODE	INDICATIONS FOR USE
Lortab	Hydrocodone/APAP 7.5 or 10mg /500mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Lorcet 10mg	Hydrocodone/APAP 10mg/650mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Norco	Hydrocodone/APAP 10mg/325mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain
Vicodin Vicodin ES	Hydrocodone/APAP 5/500 or 7.5/750mg	Yes	Yes-C3 HSC 11056 (e) (4)	Pain

IV.

**GENERAL BACKGROUND**

17. From May 5, 2003, through February 10, 2005, Respondent worked as a pharmacy technician at Rio Linda Drug. While working as a pharmacy technician, she placed drug orders, received drug orders, signed Proof of Delivery forms and filed these invoices. These drugs included controlled substances.

18. From January 2, 2004, through February 10, 2005, Respondent, while working at Rio Linda Drug dishonestly, fraudulently and deceitfully obtained approximately 378,558 doses of hydrocodone with acetaminophen 10/325 tablets, 49,634 doses of hydrocodone with acetaminophen 7.5/750 tablets, 24,726 doses of hydrocodone with acetaminophen 5/500

1 tablets, 6,470 doses of hydrocodone with acetaminophen 10/500 tablets, 3,600 doses of  
2 hydrocodone with acetaminophen 7.5/500 tablets, and 1,000 doses of hydrocodone with  
3 acetaminophen 10/650 tablets, by diverting Rio Linda Drug's inventory.

4 19. (*Signing for delivery of dangerous drugs*) From January 2, 2004, through  
5 February 10, 2005, Respondent, while working at Rio Linda Drug, signed hundreds of proof of  
6 delivery forms for dangerous drugs, which legally must only be performed by a pharmacist.

7  
8 20. (*Failure to maintain invoices*) Respondent failed to maintain 62 Cardinal  
9 Health invoices, 11 Valley Wholesale invoices, and 1 Qualitest invoice for hydrocodone with  
10 acetaminophen acquisitions.

11 21. (*Subverting investigation*) On June 9, 2005, and June 16, 2005,  
12 Respondent did not appear at scheduled appointments with the Board investigator regarding  
13 investigation of her Rio Linda Drug employment. The Board investigator left several phone  
14 messages with Respondent requesting her to call back. Respondent did not return these calls.

15 V.

16 VIOLATIONS

17 (B&P SECTION 4301(f))

18 (Obtaining controlled substance through fraud, deceit, subterfuge)

19 22. Paragraphs 17 through 21 are incorporated herein by reference.  
20 Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301,  
21 subdivision (f), on the grounds of unprofessional conduct, in obtaining controlled substances  
22 through fraud, deceit and subterfuge. More specifically, Respondent McKeon fraudulently  
23 obtained 463,000 doses of hydrocodone with acetaminophen, a schedule III controlled substance  
24 by diverting the inventory from Rio Linda Drug, failing to maintain the records of acquisition  
25 and/or the invoices.

26 ///

27 ///

28 ///

**(B&P SECTION 4301(j))**  
(Violation of State Statutes)

23. Paragraphs 17 through 22 are incorporated herein by reference.

Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct, for violating the following state statutes:

- a. Bus. & Prof. Code, section 4059.5(a), which requires that dangerous drugs may only be delivered to "and signed for and received by a pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge." From 2002, through February 10, 2005, Respondent signed for and/or received deliveries to Rio Linda Drug of dangerous drugs, thereby violating section 4059.5(a).
- b. Health & Safety Code, section 11209(a), which prohibits delivery of Schedule II, III, or IV controlled substances from being delivered "unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substance received." Any discrepancies are "to be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy." From 2002, through February 10, 2005, Respondent, who is not a pharmacist, received and signed for controlled substances delivered to Rio Linda Drug, thereby violating section 11209(a).
- c. Bus. & Prof. Code, section 4301(f), Respondent violated this statute by obtaining controlled substances through fraud, deceit and subterfuge, as alleged in paragraph 22.
- d. Health & Safety Code, section 11352(a)/Health & Safety Code, section 11350/ Bus. & Prof. Code, section 4060 Respondent violated these statutes by furnishing and/or possessing approximately 463,000 doses of hydrocodone with acetaminophen, a Schedule III Controlled Substance, without a prescription.
- e. Bus. & Prof. Code, section 4301(q) Respondent subverted the Board's investigation, as is alleged in the following paragraph.

**(B&P SECTION 4301(q))**

(Subverting An investigation)

24. Paragraphs 17 through 21 are incorporated herein by reference.

Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (q), on the grounds of unprofessional conduct, for subverting an investigation, based on the following conduct:

///

- 1 a. On June 9, 2005, Respondent McKeon was scheduled for a Board  
2 appointment regarding the Board's investigation of statutory violations  
3 surrounding her employment at Rio Linda Drug. Respondent McKeon  
4 failed to keep this appointment.  
5  
6 b. On June 16, 2005, Respondent McKeon was scheduled for a Board  
7 appointment regarding the Board's investigation of statutory violations  
8 surrounding her employment at Rio Linda Drug. Respondent McKeon  
9 failed to keep this appointment.  
10  
11 c. On June 17, 2005, an agent of the Board left several phone messages for  
12 Respondent McKeon requesting her to call. Respondent failed to respond to  
13 the phone messages.

14 **(B&P SECTION 4301(o))**

15 (Violation of Laws and Regulations)

16 25. Paragraphs 17 through 24 are incorporated herein by reference.

17 Respondent McKeon is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301,  
18 subdivision (o), on the grounds of unprofessional conduct, for violating directly and/or indirectly  
19 the laws as alleged in paragraphs 18 through 24 above.

20 ///

21 ///

22 ///

1 VI.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
4 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

5 1. Revoking or suspending Pharmacy Technician Registration Number TCH  
6 49265 issued to Nikki Lynn McKeon;

7 2. Ordering Respondent Nikki Lynn McKeon to pay the Board of Pharmacy  
8 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
9 Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.  
11

12 DATED: 4/24/06  
13

14 P. F. Harris  
15 PATRICIA F. HARRIS  
16 Executive Officer  
17 Board of Pharmacy  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

21 10219695  
22  
23  
24  
25  
26  
27  
28

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JESSICA M. AMGWERD, State Bar No. 155757  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 445-7376  
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2961

11 NIKKI LYNN MCKEON

**REQUEST FOR DISCOVERY**

12 Respondent.

[Gov. Code § 11507.6]

13  
14 TO RESPONDENT:

15 Under section 11507.6 of the Government Code of the State of California, parties  
16 to an administrative hearing, including the Complainant, are entitled to certain information  
17 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the  
18 Government Code concerning such rights is included among the papers served.

19 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU  
20 ARE HEREBY REQUESTED TO:

- 21 1. Provide the names and addresses of witnesses to the extent known to the  
22 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and  
23 2. Provide an opportunity for the Complainant to inspect and make a copy of any of  
24 the following in the possession or custody or under control of the Respondent:
- 25 a. A statement of a person, other than the Respondent, named in the initial  
26 administrative pleading, or in any additional pleading, when it is claimed that the act or  
27 omission of the Respondent as to this person is the basis for the administrative  
28 proceeding;

1           b.       A statement pertaining to the subject matter of the proceeding made by any  
2 party to another party or persons;

3           c.       Statements of witnesses then proposed to be called by the Respondent and  
4 of other persons having personal knowledge of the acts, omissions or events which are the  
5 basis for the proceeding, not included in (a) or (b) above;

6           d.       All writings, including but not limited to reports of mental, physical and  
7 blood examinations and things which the Respondent now proposes to offer in evidence;

8           e.       Any other writing or thing which is relevant and which would be  
9 admissible in evidence, including but not limited to, any patient or hospital records  
10 pertaining to the persons named in the pleading;

11          f.       Investigative reports made by or on behalf of the Respondent pertaining to  
12 the subject matter of the proceeding, to the extent that these reports (1) contain the names  
13 and addresses of witnesses or of persons having personal knowledge of the acts,  
14 omissions or events which are the basis for the proceeding, or (2) reflect matters  
15 perceived by the investigator in the course of his or her investigation, or (3) contain or  
16 include by attachment any statement or writing described in (a) to (e), inclusive, or  
17 summary thereof.

18               For the purpose of this Request for Discovery, "statements" include written  
19 statements by the person, signed, or otherwise authenticated by him or her, stenographic,  
20 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,  
21 and written reports or summaries of these oral statements.

22               YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for  
23 Discovery should be deemed to authorize the inspection or copying of any writing or thing which  
24 is privileged from disclosure by law or otherwise made confidential or protected as attorney's  
25 work product.


26               Your response to this Request for Discovery should be directed to the undersigned  
27 attorney for the Complainant at the address on the first page of this Request for Discovery **within**  
28 **30 days after service** of the Accusation.



1 Failure without substantial justification to comply with this Request for Discovery  
2 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30  
3 of the Government Code.

4 DATED: 5-1-06

5 BILL LOCKYER, Attorney General  
6 of the State of California

7  
8   
9 JESSICA M. AMGWERD  
Deputy Attorney General

10 Attorneys for Complainant

11 10240805.wpd  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JESSICA M. AMGWERD, State Bar No. 155757  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 445-7376  
Facsimile: (916) 327-8643  
6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 NIKKI LYNN MCKEON

12 Respondent.

Case No. 2961

**STATEMENT TO RESPONDENT**

[Gov. Code §§ 11504, 11505(b)]

13  
14  
15 TO RESPONDENT:

16 Enclosed is a copy of the Accusation that has been filed with the Board of  
17 Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

18 Unless a written request for a hearing signed by you or on your behalf is delivered  
19 or mailed to the Board, represented by Deputy Attorney General Jessica M. Amgwerd, within  
20 fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you,  
21 you will be deemed to have waived your right to a hearing in this matter and the Board may  
22 proceed upon the Accusation without a hearing and may take action thereon as provided by law.

23 The request for hearing may be made by delivering or mailing one of the enclosed  
24 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided  
25 in section 11506 of the Government Code, to

26 Jessica M. Amgwerd  
27 Deputy Attorney General  
1300 I Street, Suite 125  
28 P.O. Box 944255  
Sacramento, California 94244-2550.

1           You may, but need not, be represented by counsel at any or all stages of these  
2 proceedings.

3           The enclosed Notice of Defense, if signed and filed with the Board, shall be  
4 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any  
5 objection to the form of the Accusation unless you file a further Notice of Defense as provided in  
6 section 11506 of the Government Code within fifteen (15) days after service of the Accusation  
7 on you.

8           If you file any Notice of Defense within the time permitted, a hearing will be held  
9 on the charges made in the Accusation.

10           The hearing may be postponed for good cause. If you have good cause, you are  
11 obliged to notify the Office of Administrative Hearings, 560 J Street, Suite 340/360, Sacramento,  
12 California 95814, within ten (10) working days after you discover the good cause. Failure to  
13 notify the Office of Administrative Hearings within ten (10) days will deprive you of a  
14 postponement.

15           Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are  
16 enclosed.

17           If you desire the names and addresses of witnesses or an opportunity to inspect  
18 and copy the items mentioned in section 11507.6 of the Government Code in the possession,  
19 custody or control of the Board you may send a Request for Discovery to the above designated  
20 Deputy Attorney General.

21           **NOTICE REGARDING STIPULATED SETTLEMENTS**

22           It may be possible to avoid the time, expense and uncertainties involved in an  
23 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated  
24 settlement is a binding written agreement between you and the government regarding the matters  
25 charged and the discipline to be imposed. Such a stipulation would have to be approved by the  
26 Board of Pharmacy but, once approved, it would be incorporated into a final order.

27           Any stipulation must be consistent with the Board's established disciplinary  
28 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the

1 Board's Disciplinary Guidelines will be provided to you on your written request to the state  
2 agency bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing,  
4 or if you have any questions, you or your attorney should contact Deputy Attorney General  
5 Jessica M. Amgwerd at the earliest opportunity.

6 \*\*\*\*\*

7 SA2005105190  
8 10240805.wpd  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NIKKI LYNN MCKEON

Respondent.

Case No. 2961

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

10240805.wpd

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NIKKI LYNN MCKEON

Respondent.

Case No. 2961

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

10240805.wpd



**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7**  
**PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

\*\*\*\*\*

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**

(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Nikki Lynn McKeon**

No.: **2961**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 1, 2006, I served the attached **Accusation, Request for Discovery, Statement to Respondent, Notice of Defense, applicable Government Codes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **above-entitled documents** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

**BY U.S. & CERTIFIED MAIL TO:**

Nikki Lynn McKeon  
4709 Claremont Ave.  
Stockton, CA 95204

**Certified Article Number**

**7160 3901 9848 9138 1954**

**SENDERS RECORD**

**BY U.S. MAIL ONLY TO:**

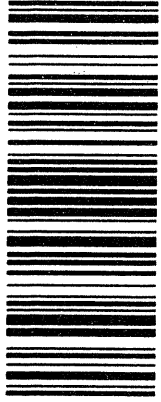
Susan Cappello  
Enforcement Analyst  
Board of Pharmacy  
1625 North Market Boulevard, Suite N-219  
Sacramento, CA 95834

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 1, 2006, at Sacramento, California.

\_\_\_\_\_  
Jessica L. Taylor  
Declarant

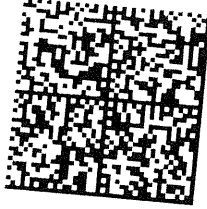
\_\_\_\_\_  
*Jessica L. Taylor*  
Signature

Exhibit B  
Postal Return Documents



7160 3901 9848 9138 1954

RETURN RECEIPT REQUESTED



STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
OFFICE OF ATTORNEY GENERAL  
P.O. BOX 944255  
SACRAMENTO, CALIFORNIA 94244-2550



Nikki Lynn McKeon  
4709 Claremont Ave.  
Stockton, CA 95207

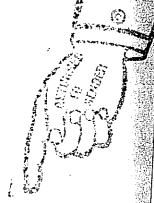
SCANNED

MCKE709 952073584 IN 07 05/03/06  
UNABLE TO FORWARD  
NO FORWARD ORDER ON FILE  
RETURN TO POSTMASTER  
OF ADDRESSEE FOR REVIEW

MCKE709 952073384 IN 07 05/03/06  
UNABLE TO FORWARD

NO FORWARD ORDER ON FILE

RETURN TO POSTMASTER  
OF ADDRESSEE FOR REVIEW



NOT DELIVERABLE  
AS ADDRESSED  
UNABLE TO FORWARD

STATE OF CALIFORNIA  
**DEPARTMENT OF JUSTICE**  
**OFFICE OF ATTORNEY GENERAL**  
P.O. BOX 944255  
SACRAMENTO, CALIFORNIA 94244-0650

Nikki Lynn McKeon  
4709 Claremont Ave  
Stockton, CA 95207